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EXAMINER

TRAN, KHOA H

| | |
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| ART UNIT | PAPER NUMBER |
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3634

DATE MAILED: 03/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/379,704

Applicant(s)

ROBERT P. BURKE

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 9, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 and 36-40 is/are pending in the application.
- 4a) Of the above, claim(s) 12, 20, 29, and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-19, 21-28, 30-32, 36, and 38-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Aug 24, 1999 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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DETAILED ACTION

Claims 12, 20, 29 and 37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 10.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “first, second, third, fourth, fifth and sixth surfaces”, “said second surface and said fourth surface being lower surfaces” and “a fifth surface in contact with a sixth surface” in claim 39, and the “seventh and eight surfaces” in claim 40 must be shown or the features canceled from the claims. No new matter should be entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 39 and 40, it is not known what is being set forth to claim. In particular, it is unclear to which element is constitutes the first, second, third, fourth,

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fifth, sixth, seventh, and eight surface, since there is no recitation in the disclosure or referencing in the drawings of such surfaces in order to promote the understanding of what is being claimed so that a proper search can be performed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 9, 10, 11, 13, 14, 22, 26, 29, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by applicant's submitted prior art of Jackle, III et al. ('236). The claims are of such breadth that they read on the pusher block and a track of Jackle, III et al. ('236) Jackle ('236) discloses an adjustable display rack that is removably attached to a frame comprising:

- a front panel and rear panel each comprising a race (210 and 212) extending the entire length of the rack (200), and allow attachment of product tracks (250) and dividers (220) thereon, See Figures 1, 4 and 5;
- at least one divider (220) being positioned between said at least two product tracks (250), wherein at least two product tracks and at least one dividers are slidably attached to said race, wherein said race having a slot (214 and 216) receives the attachment of tracks (250)

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- and dividers (220) to allow tracks and dividers to move horizontally since the slot on each race allows the track to adjust in width, see column 2, lines 31-35;
- at least two product tracks, each track (332) having a pair of raised rails (342) extending between the front transparent wall and a rear panel, see Figures 11 and 12 and column 8, line 18; and
 - a removable pusher block (260) attaches to each of said tracks having a biasing spring member (266) that urges each of the block forwardly on a track, see column 6, lines 40-51

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 21, 38, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) as applied to claims 7, 9, 10, 11, 13, 14, 22, 26, 29, and 36 above, and further in view of Hawkinson et al. ('869) and Johnson et al. ('690). Hawkinson ('869) teaches a type of a track having a pair of projecting rails (22) in a generally T shape with projecting tie down surfaces (20) projecting inwardly below the rails. The projected tie down surfaces is to guide the moving spring underneath the pusher block. The pusher block has a pair of flanges attach to the top and outside surfaces of the rails, see Figure 4. Johnson et al. ('690)

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teach a type of pusher block (12) having two sets of opposing flanges (54a, 54b and 56a, 56b). The set of flanges comprises the outside flanges (54a and 54b) and the inside flanges (56a and 56b). The outside flanges attach to the top and outside surfaces of rails and the inside flanges extending below the outside flanges. The outside and inside flanges together defining apertures of upper and lower chamfers, see Figure 3. (Accordingly to the two set pairs of flanges of Johnson et al. and as best as understood, the third surface is the downward projected member 56a, the fourth surface is the horizontal member 56a, the first surface is the downward projected member 56b, the second surface is the horizontal member 56b, wherein the second surface and fourth surface being lower surfaces of portions of the pusher block (12) being adapted to engage to resist separation of the product pusher, a fifth surface of horizontal member 54a is in contact with the sixth surface of horizontal member 54b by integrally formed with a pusher block 12, a seventh surface (30a) forms a portion of the track, an eighth surface is the downward projected member 54b being adapted to engage to resist separation of the product pusher from the track).

Considering the disclosure of Jackle, III et al. ('236) and the teachings of Hawkinson et al. ('869) and Johnson et al. ('690) taken as a whole, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the adjustable display rack of Jackle, III et al. ('236) with the provision projecting rails that is in generally T shape with projecting tie down surfaces as taught by Hawkinson et al. ('869) and modify the pusher block with the provision of the two sets of opposing flanges as taught by Johnson et al. ('690) in order to have the pusher block attach to the T-shaped rails and the lower flanges being slidably guided under the tie down

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surfaces and to promote securing the pusher block and prevent the pusher block from separating with the track. Further, the two sets of flanges take play in defining first, second, third, fourth, fifth, sixth, seventh and eight surfaces between the upper and lower chamfers.

Claims 3, 16-19, 23, and 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869) and Johnson et al. ('690) as applied to claims 1, 2, 4-7, 9, 10, 11, 13, 14, 21, 22, 26, 29, 36, 38, 39 and 40 above, and further in view of Pappagallo et al. Pappagallo teaches a track system having a spacer block (100) fits onto a pusher block (101), and a side panel (70) attaches to the front and rear panels (66 and 68) by removable fasteners. See Figures 3 and 4. It would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the pusher block of Jackle, III et al. ('236) with the provision of a spacer block that is fitted onto the pusher block and provide the side panel attaches to the front and rear panels by fasteners as taught by Pappagallo in order to accommodate the pusher block to enable to push the item that is taller and wider than the pusher block and to have the side panel to be securely fixed to the front and rear panels.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869) and Johnson et al. ('690) as applied to claims 1, 2, 4-7, 9, 10, 11, 13, 14, 21, 22, 26, 29, 36, 38, 39 and 40 above, and further in view of Yablans et al. ('552). Yablans ('552) teaches a track and a divider formed in a single piece, see Figure 3. To one of ordinary skill in the art, it would have been an obvious matter of design choice to have

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made the track and divider in a single piece as taught Yablans et al. ('552) in order to promote the ease of manufacture and eliminate steps of assembly between the track with a divider.

Claims 15, 25, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869), Johnson et al. ('690) and Pappagallo et al. as applied to claims 1, 2-7, 9, 10, 11, 13, 14, 16-19, 21-24, 26, 29, 36, 38, 39 and 40 above, and further in view of Markson ('801). Markson ('801) teaches a track system having the front panel rearwardly angle toward the rear panel and a spacer block stopping member (94, 97) holds the pusher block (90) at a distance from the front panel. See Figures 17, 20, and 21. It would have been obvious to one of ordinary skill in the art to have made the retaining wall of Hawkinson et al. ('869) to project rearwardly and provide the pusher block with a spacer block stopping member as taught by Markson ('801) in order to have the rearward projecting front panel and the spacer block is to prevent the pusher block from damaging the front panel.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869), Johnson et al. ('690) and Markson ('801) as applied to claims 1, 2-7, 9, 10, 11, 13-19, 21-25, 26, 29, 30, 36, 38, 39 and 40 above, and further in view of Schmid ('099). Schmid ('099) teaches a pusher block (26) having a stop member (16) locates on the rail with a rivet (32) therethrough, see Figure 2. It would have been obvious to one of ordinary skill in the art to substitute the stop member of Markson ('801) with the stop member as taught by Schmid ('099) in order to have a stop member locates on the rails to take play in the application thus producing no unexpected results.

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Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackle, III et al. ('236) in view of Hawkinson et al. ('869) and Johnson et al. ('690) as applied to claims 1, 2, 4-7, 9, 10, 11, 13, 14, 21, 22, 26, 29, 36, 38, 39 and 40 Gold ('463). Gold ('463) teaches the track that is made by lubricious material of silicone coating. See row 3, lines 35-43. It would have been obvious to one of ordinary skill in the art at the time of invention was made to provide the track system of Hawkinson with material that is formed of lubricious material of coating with silicone as taught by Gold in order to have the track surface that is low in friction coefficient.

Response to Arguments

Applicant's arguments filed on January 09, 2002 have been fully considered but they are not deemed to be persuasive.

With respect to applicant's arguments on page 9 to the drawings objection that there is sufficient disclosure in the specification to enable the examiner to interpret the claimed limitations of claims 39 and 40. The examiner respectfully disagrees. It should be noted there is no specific recitation in the specification of the fourth, fifth, sixth, seventh and eight surfaces as recited in claims 39 and 40. In particular, it is unclear to which elements constitute the fourth, fifth, sixth, seventh and eight surfaces locate to the respective left and right sides of said track and having the fifth surface in contact with the sixth surface, see claims 39 and 40. Further, the applicant is reminded that under 35 U.S.C. 113 and 37 CFR 1.81, the applicant is required to furnish a drawing where necessary for the understanding of the subject matter to be patented and for the

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purpose of interpretation of the scope of the claim. At the outset, the applicant has failed to furnish a drawing containing referencing to the first, second, third, fourth, fifth, sixth, seventh and eight surfaces for the proper interpretation of claims 39 and 40, and as best as understood the surfaces as recited in claims 39 and 40 taught by Johnson et al.

With respect to applicant's remarks on page 13 that Jackle, III et al. fail to disclose the raised rails and the tracks and dividers slidably attaching to the front and rear races. The examiner respectfully disagrees. It should be noted that members 342 of Jackle, III et al. constitute the raised rails because there is no distinct language set apart between the claimed raised rails and the raised rails of Jackle, III et al., further the mere use of unique terminology will not preclude a prior art structure from reading on the structure of the claimed invention. With respect to applicant's remarks that Jackle, III et al. do not disclose the slidably attaching of the tracks and dividers to the front and rear races. The examiner respectfully disagrees. Applicant attention is directed to column 2, lines 27-34 and Figures 4 and 5 of Jackle, III et al. disclose the dividers are adjustable in width and the showing of the track and divider are slidably attaching to the race. Further, it should be noted that the law of anticipation does not require the reference teach what is being claimed. Rather, the claims need only "reads on" the reference for anticipation to exist.

With respect to applicant's arguments on pages 15-16 that Johnson et al. do not teach the below rails (56a and 56b) come in contact with the underside of the raised rails is not commensurate with the scope of the claim. Further, it should be noted that Johnson et al. do teach at least one

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chamfers formed between the first set of opposing flange member 54a and the second set of opposing flange member 56a.

With respect to applicant's remarks concerning claims 39 and 40 of the first, second, third, fourth, sixth, seventh and eighth surfaces recited therein claims. It should be noted that there is no support in the drawings specifically identify what constitutes the first, second, third, fourth, sixth, seventh and eighth surfaces as recite in claims. Further, the instant claim language do not reflect on what is being disclosed for understanding. In particular, there is no disclosure in the specification of the fourth, sixth, seventh and eighth surfaces as set forth in claims. As the result of the absent showing the first, second, third, fourth, sixth, seventh and eighth surfaces in the drawings, the examiner has further interpreted such features are taught by Johnson et al.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or 305-3598.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission.

Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. _____) on _____
(Date)

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Type or printed name of person signing this certificate:

(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Khoa Tran

March 14, 2001

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looping initial "D".

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600